

EXHIBIT 98

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF TENNESSEE

3
4 NIKKI BOLLINGER GRAE, Individually
5 and Behalf of All Others Similarly

6 Situated,

7 Plaintiff,

8 vs. CASE NO.

9 3:16-CV-02267

10 CORRECTIONS CORPORATION OF

11 AMERICA, et al.,

12 Defendants.

13 CONFIDENTIAL

14 VIDEO DEPOSITION OF PATRICK SWINDLE

15 Nashville, Tennessee

16 February 21, 2020

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20 Reported by:

21 Elisabeth A. Miller Lorenz

22 RMR, CRR, LCR No. 66

23
24 Job No.: 10066784

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17 Video deposition of PATRICK SWINDLE was
18 taken on behalf of Plaintiff, at Riley, Warnock &
19 Jacobson, 1906 West End Avenue, Nashville,
20 Tennessee, beginning at 9:35 a.m., and ending at
21 12:53 p.m., on Friday, February 21, 2020, before
22 Elisabeth A. Miller Lorenz, RMR, CRR, and LCR No.
23 66.
24
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1 APPEARANCES:

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Also Present:

20

David Drumel, Videographer

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25

1 Warnock & Jacobson, on behalf of defendants and the
2 witness.

3 THE VIDEOGRAPHER: Thank you.

4 Would the court reporter please swear
5 in the witness.

6 * * *

7 PATRICK SWINDLE

8 was called as a witness, and after having been first
9 duly sworn, testified as follows:

10 EXAMINATION

11 BY MR. WOOD:

12 Q Good morning, Mr. Swindle.

13 A Good morning.

14 Q You were here before testifying as a
15 representative of CoreCivic, right?

16 A Yes.

17 Q And you understand that today you're
18 testifying in your personal capacity, right?

19 A Yes.

20 Q And can you tell me what you did to prepare
21 for today's deposition?

22 A I read the summary from my last deposition,
23 the 30(b)(6); I met with counsel briefly to prepare
24 earlier this week, and that's the extent of my
25 preparation.

1 included would be an operations decision.

2 Q And so who ultimately would be responsible
3 for -- for that?

4 A As we go through the budget process -- so we
5 prepare the first pass budget. First pass budget is
6 sent to the operations team. The operations teams
7 distribute it to their facilities. The facilities
8 would review those, and then they have what -- what
9 they call budget panel or budget hearing with the
10 operations vice president and then the managing
11 director for that business unit in the division.

12 And it would be in that discussion that an FTE
13 percentage would -- would be set.

14 Then as we iterate the budget, each time we
15 iterate the budget, they -- they are the owner of
16 those ultimate decisions unless they were to go to
17 the CCO role because it -- the VP would report to
18 the CCO.

19 Q And so is that part of -- well, okay. All
20 right.

21 (Marked Exhibit No. 300.)

22 BY MR. WOOD:

23 Q I'm passing you what's been marked Exhibit
24 No. 300.

25 Do you recognize Exhibit No. 300?

1 A I do.

2 Q And what is it?

3 A It is a -- an internal analysis to compare
4 our cost of services versus the Bureau of Prisons --
5 or the private sector, I should say, versus the
6 Bureau of Prisons.

7 Q And was this something that you were
8 responsible for completing?

9 A Well, this would fit within the financial
10 planning and analysis function of responsibility.
11 So we would have had responsibility as a team for
12 evaluating population trends, cost comparisons,
13 those -- those types of things as requested.

14 Q But was this -- were you ultimately
15 responsible for the production of this report?

16 A Well, Erik -- based on the reading and my
17 recollection, Erik prepared the report. He reports
18 to me, so ultimately I'm responsible.

19 Q Did somebody ask you to prepare this report?

20 A I -- I honestly can't recall the
21 conversation that resulted in its creation.

22 Q So you don't -- you can't remember anything
23 about -- well, do you remember anything about why
24 you created this report?

25 A Well, the --

1 MR. GLENNON: Objection, vague.

2 THE WITNESS: Well, reading it
3 contextually, what I would say is, there was an
4 opportunity once a member of a prior agency joined
5 our company to evaluate at a very deep level what
6 the cost comparison was of our service versus that
7 agency.

8 And so it's a way for us to test, are
9 we -- how much cheaper are we, and what are the cost
10 components, and then confirm what we believe to be
11 the case in terms of our cost versus the
12 government's cost.

13 BY MR. WOOD:

14 Q So you're saying when Mr. Lappin joined CCA
15 there was an opportunity to do that deep-level
16 comparison?

17 MR. GLENNON: Objection, foundation.

18 THE WITNESS: His joining our company
19 gave unique insight into the cost of one of our
20 customers, which we wanted to evaluate and better
21 understand.

22 BY MR. WOOD:

23 Q And how did -- how did he provide that
24 unique insight?

25 A Well -- so I can't -- I can't recall the

1 specifics. I recall us preparing a report, having a
2 conversation to talk through the specifics of the
3 report. We then had some follow-up that we came
4 back with to then have a secondary conversation
5 around the individual cost components of -- but
6 it -- in terms of his response, I can't remember the
7 specific details.

8 Q But he had insight into the BOP costs,
9 right?

10 A Oh, absolutely.

11 Q Yeah.

12 And -- and you utilized that insight in
13 preparing this report?

14 A Well, we prepared -- so I should say, we did
15 not use unique insight from Harley in preparing a
16 report. We developed a report as a baseline to
17 evaluate the accuracy of our assumptions.

18 So the report would be initially created
19 based on our view, so data that I have, that Erik
20 had, that reflected our view of the cost
21 differential, we're then validating that.

22 So an example of that would be -- how should
23 I best refer to this page?

24 Q Yeah, that's a -- well, do you have --

25 A It would be --

1 Q There's a Bates number on the bottom there.

2 Do you see that?

3 A Looks like it would be -- end in -- so

4 1327568?

5 Q Yeah.

6 A So this is a published report that Harley
7 signed off on when he was the director of the Bureau
8 of Prisons that's a basis for cost comparison for
9 correctional purpose -- or for congressional
10 purposes.

11 Q Right.

12 A And we -- we knew the cost differential
13 between private operating institutions and low
14 security institutions, which is the prime comparable
15 for us. So we knew that cost differential.

16 We also know there are certain costs not
17 included in this cost analysis, and we had a view of
18 what we believed those were. And it was an
19 opportunity for us to test and ensure, given his
20 sign-off, were they included or not or how were
21 those costs reflected.

22 So we prepare our analysis based on what we
23 believe to be the case, test that against the
24 reality that -- that he lived, and then use that as
25 a basis to assess the differential.

1 Q And so Mr. Lappin appears to have signed off
2 on -- sticking with that page that you're on,
3 Mr. Lappin signed off on this it appears on
4 January 2011, right?

5 A That's the date reflected here.

6 Q And then he left the BOP shortly after that,
7 right?

8 A I can't remember the exact timing of his
9 departure.

10 Q And then joined CCA, right?

11 A He did, yes.

12 Q And so sticking with that page, I want to
13 get your understanding of the data on this page
14 since you -- you helped prepare this report, right?

15 A Uh-huh -- well, Erik prepared the report; I
16 review the report. But I have an understand --
17 understanding of all the data.

18 Q Okay. Great.

19 So low security there, that refers to the
20 BOP's low security facilities, right?

21 A That's correct.

22 Q And it shows a daily cost.

23 Is that -- is that per inmate of \$61.81?

24 A What I see is a fully loaded cost of \$69.53.

25 Q Right.

1 at no point did I have all private sector per diems,
2 so I could not say that definitively.

3 BY MR. WOOD:

4 Q You don't know whether or not the 64.13
5 includes oversight costs that the BOP would have
6 with respect to those privately operated
7 institutions?

8 A I don't know that definitively.

9 Q Do you know it -- okay. Do you have -- do
10 you know it at all? Do you have any sense?

11 A Well, so at -- my presumption -- well, it
12 would be pure speculation on my part. I -- the --
13 my presumption is that this is the average of all
14 per diems, so as awarded, in which case would not
15 include the support costs.

16 Q And do you know how much those support costs
17 are?

18 A I do not.

19 Q Because they do -- right there -- there are
20 monitors that the BOP has at the private prisons,
21 right?

22 A Right.

23 Q And the contracting office, right?

24 A That's correct.

25 Q Okay.

1 A Now, what I would also say maybe from
2 apples-to-apples perspective --

3 Q Yeah.

4 A -- because that's what we were really
5 striving with this report, there -- there are
6 specific component parts of our per diem we know are
7 excluded from the BOP's per diem.

8 And so an example of that would be capital
9 isn't reflected in the BOP's per diem. I guess the
10 way I think about the -- our -- our contracts at our
11 facilities, there are two major cash flow streams.
12 There's the outflow to build a facility and the
13 financing of that facility and then the day-to-day
14 operation of the facility.

15 Our cash flow stream is reflecting both of
16 those, and so the privately operated institution --
17 institution per diem includes the capital for
18 construction and financing a facility and the
19 operation of the facility.

20 The BOP's per diem only assumes operations;
21 it doesn't include a capital component, because the
22 funding is congressionally appropriated and then
23 funded as part of the general federal budget pool.
24 So there's no cap- -- what I call capital load
25 attached to the BOP's per diem that's reflective of

1 their cost.

2 Q How did you -- or how did CCA use this
3 report once it was completed?

4 A How did CCA use this full report?

5 Q Uh-huh.

6 A It was purely validating. I mean, it's a
7 conversation to validate the inference that we
8 believed, which is that the company is providing a
9 cost-effective service to government and that we're
10 providing them with meaningful cost savings.

11 So it was purely used as a conversational
12 tool with ourselves and Harley to sort of
13 iteratively baseline our understanding.

14 Q But you didn't use it externally outside the
15 company to try to get more business from the BOP?

16 A Well, I can't -- I can't speak for how
17 others might have used it. I -- I certainly wasn't
18 a part of it being used in that capacity.

19 Q Were you involved in -- in lobbying efforts
20 to try to require the BOP to use the lowest cost
21 facilities for its inmates?

22 A I have a --

23 MR. GLENNON: Objection, foundation.

24 THE WITNESS: I have not been involved
25 in lobbying for CoreCivic.

1 BY MR. WOOD:

2 Q At all?

3 A I have not.

4 Q Including that topic?

5 MR. GLENNON: Objection, vague.

6 THE WITNESS: I have not -- I have not
7 been involved with lobbying for CoreCivic.

8 BY MR. WOOD:

9 Q Are you -- well -- so you're not aware of
10 the topics that CoreCivic lobbies about; is that
11 fair?

12 A Lobbying is done in a different part of the
13 organization that I have not previously been a part
14 of. Now, we have very public statements about what
15 we do and we don't lobby for.

16 Q Right.

17 A Which are very public statements.

18 Q Right.

19 A But in terms of active participation in the
20 education process for elected can- -- or elected
21 individuals, I haven't been a part of that strategy
22 at all.

23 (Marked Exhibit No. 301.)

24 BY MR. WOOD:

25 Q I'm passing you what's been marked

1 A The monthly operational metrics report.

2 Q And what is -- and this is a document that
3 you received. Your name is down there near the
4 bottom of the "to" line.

5 Do you want to confirm that?

6 A Yes, I am on the distribution for this
7 report.

8 Q And what is a monthly operational metrics
9 report?

10 A It's a metrics report that traditionally
11 somebody in financial planning and analysis, either
12 Tony Miller or Amanda Lester or Ryan McCutcheon or
13 one of the other team members, would have had
14 responsibility for aggregating data from multiple
15 sources and then distributing it to the list that is
16 detailed here.

17 Q And you -- you were on that distribution
18 list?

19 A Yes.

20 Q How would you use the -- this report in
21 your -- in your work?

22 A Well, because of the timing of the
23 distribution of the metrics report, it's delivered
24 after I receive a lot of the financial data that's
25 in the report when I was in this role. So much of

1 what would be reflected, I would have already
2 consumed.

3 So I -- I did not use this report
4 extensively for my purposes because it really lagged
5 the work that I was doing from a forecasting
6 standpoint. So I would typically get ad hoc reports
7 from particularly Tony Miller that would -- you
8 know, well before the distribution of this report --
9 help me recalibrate the forecast each month.

10 Q I want to go through a little bit of this
11 report too and make sure that I understand what it's
12 reflecting.

13 So if you would look at the first page,
14 there are no Bates numbers on this, but the first
15 page with data on it says, Executive summary
16 February 2014 versus budget.

17 Do you see that?

18 A I do.

19 Q And so the -- the first -- the first set of
20 rows says Division 1, right, which is the -- the BOP
21 facilities, right?

22 A Correct.

23 Q It includes the BOP facilities?

24 A Correct, Division 1 includes the BOP
25 facilities.

1 Q And then -- so the first set of items says

2 Total Revenue.

3 And what does Actual refer to under Total

4 Revenue?

5 A It would have been -- Actual would refer to

6 the actual revenue that was booked during February

7 of 2014.

8 Q And does booked mean invoiced? I guess it

9 doesn't mean received.

10 A It would mean -- that would be -- it --

11 there's always budget reconciliation that occurs

12 with customers, so it would be what we have invoiced

13 the customer. There may be an adjustment that would

14 occur in a subsequent period.

15 We don't -- we don't eliminate the noise, so

16 each period there's some amount of noise. And so it

17 would reflect prior -- prior period adjustments plus

18 current period invoice.

19 Q Can you say that again?

20 A I should say the invoice would reflect a --

21 would reflect any prior period adjustments. So --

22 so in other words, the -- it's conceivable that a

23 prior period event could be impacting the current

24 period, but it is booked revenue for the period.

25 Q Right.

1 So if there was a -- well, as an example of
2 that, like if -- if you got a fine for an event six
3 months ago, but they could say, Take it off the next
4 invoice?

5 A Yes.

6 Q So actual is the actual amount invoiced in
7 that month.

8 And what about budget?

9 A Well, actual is the amount recorded in that
10 month.

11 Budget would be -- and so, for example, you
12 could have a revenue accrual. So if we were to have
13 an indication that some event might be occurring, we
14 could accrue for that event. And then when we would
15 adjust, it might not be the actual invoice, but it
16 would be reflective of the net of those adjustments.

17 Q Understood.

18 A Budget would reflect the revenue that we
19 have -- would have budgeted or flex budgeted for the
20 period if we were flex budgeting during these
21 periods.

22 Q And B/W?

23 A Better or worse versus budget.

24 Q It's actual versus budget, right?

25 A I'm sorry, actual versus budget. I

1 apologize.

2 Q And what about -- so total operating
3 expense, what's the -- what's the actual there?

4 A Actual would be the actual expenses that
5 were accrued or incurred during the period.

6 Q For the specific facility in that row?

7 A Yes.

8 Q And what does total operating expense
9 include?

10 A Total operating expense would include all
11 direct operating costs in the day-to-day operation
12 of the facility, so it would include salaries,
13 benefits, utilities, insurance, inmate medical,
14 supplies, property taxes, transportation, all -- all
15 facility-level expenses.

16 It would exclude capital costs, so it would
17 exclude costs associated with ownership of the
18 facility -- not ownership. Repairs and maintenance
19 are included at the facility level.

20 It would not exclude -- include capitalized
21 expenses. So to the extent we had a large capital
22 repair, that's going to flow through depreciation,
23 all of our financing of our facilities would flow
24 through -- outside of these expenses, so they would
25 reflect the actual facility-level expenses for

1 operations that are nonfinancing, noncapitalizable.

2 Q And I guess would -- it wouldn't include --

3 would it include any expenses related to, like,

4 CoreCivic management in Nashville that's not

5 facility specific?

6 A All expenses would be facility-specific

7 expenses.

8 Q And then the Budget line there -- or Budget

9 column?

10 A The budget would be budgeted operating

11 expenses for that period -- budgeted or flex

12 budgeted operating expenses for that period.

13 Q And B/W is better or worse actual versus

14 budget?

15 A Yes.

16 Q What about the EBITDA?

17 A So EBITDA would be the cash flow generation

18 of the facility, so revenue minus the operating

19 expenses.

20 One dynamic about this report that I would

21 have to confirm is management revenue is our primary

22 revenue metric, but we have other revenue. And so

23 transportation revenue is sometimes received.

24 And I would have to confirm -- this says

25 total revenue. My presumption is it reflects all

1 revenue streams. So total revenue, total operating
2 expenses, column -- the EBITDA column should reflect
3 revenue minus operating expense.

4 I said a lot to say total revenue minus
5 operating expense equals EBITDA.

6 Q And so you have -- actual EBITDA is how --
7 can you define that?

8 A Actual -- actual EBITDA would be the
9 mathematical calculation of actual revenue minus
10 actual operating expense.

11 Q And budget?

12 A Budget revenue minus budget operating
13 expense.

14 Q And the B versus -- B/W?

15 A That would be actual EBITDA minus budget
16 EBITDA.

17 Q All right. And the last set of columns is
18 Average Heads and Beds.

19 Is that -- that's -- we talked about that in
20 the prior spreadsheet is -- actual is the actual
21 number of heads and beds for February 2014?

22 A In this report, actual heads and beds would
23 be the actual average heads and beds at that
24 facility during that month -- during the month of
25 February.

1 Q And budget?

2 A Budget would be the budgeted expectation.

3 Q And the B versus W?

4 A It should be actual minus budget.

5 Q If you flip a few pages, if you keep going

6 until you get to -- at the top where it says

7 Operating Expenses February 2014. I think it's the

8 next one.

9 A Yes.

10 Q And do you see the top row is Adams County

11 on that page? Make sure we're on the same page.

12 A Yes.

13 Q I want to go through this page as well and

14 make sure I understand what's reflected in here.

15 So in general, this is the operating

16 expenses per facility for February 2014, right?

17 A This -- it appears that the page just covers

18 salaries and wages, overtime, staff vacancies, and

19 other deficiencies, but it is not all-inclusive of

20 all costs.

21 Q Understood.

22 So the first set of columns says Total

23 Salaries and Wages, right?

24 A Yes.

25 Q And -- and then it's broken down to current

1 month and then the year-to-date, right?

2 A Correct.

3 Q So current month actual total salary and
4 wages -- and we'll just look at the Adams line --
5 what does that reflect?

6 A That would be the actual accrued salaries
7 for the month of February.

8 Q Is that for -- and it's for all folks
9 working at Eden -- at Adams?

10 A I don't -- I don't book it, but I -- I use
11 the data assuming that's the case, so my presumption
12 is yes.

13 Q And actual B/W versus budget?

14 A That would be actual performance versus the
15 budgeted performance, so it's reflecting better or
16 worse versus the budget.

■ ■ [REDACTED]
18 additional expenses over the budget for that month?

19 A That's correct.

20 Q And the next line that's -- reflects that
21 differential as a percentage basis?

22 A Yes.

■ ■ [REDACTED]
■ [REDACTED].

25 And then the next three columns, that's just

1 I, the undersigned, a Licensed Court
2 Reporter of the State of Tennessee, do hereby
3 certify:

4 That the foregoing proceedings were
5 taken before me at the time and place herein set
6 forth; that any witnesses in the foregoing
7 proceedings, prior to testifying, were duly sworn;
8 that a record of the proceedings was made by me
9 using machine shorthand, which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is a true record of the testimony given.

12 Further, that if the foregoing pertains
13 to the original transcript of a deposition in a
14 federal case, before completion of the proceedings,
15 review of the transcript [X] was [] was not
16 requested.

17 I further certify I am neither
18 financially interested in the action nor a relative
19 or employee of any attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date
21 subscribed my name.

22 Dated: March 6, 2020

23 

24 Elisabeth A. Miller Lorenz

25 RMR, CRR, LCR No. 66